



Cooley Law School Innocence Project

Overview and Policy Priorities



COOLEY LAW SCHOOL INNOCENCE PROJECT

- ESTABLISHED IN 2001 IN DIRECT RESPONSE TO MICHIGAN'S POST-CONVICTION DNA TESTING LAW, MCL 770.16.
- SCREENS CASES FOR POTENTIAL DNA TESTING OF MATERIAL EVIDENCE COLLECTED DURING A CRIMINAL INVESTIGATION; ONLY DNA-FOCUSED INNOCENCE ORGANIZATION IN MICHIGAN. GRANT FUNDING SUPPORTS OUR REVIEW OF A BROADER CATEGORY OF FORENSIC CASES.
- CIP IS A MEMBER OF THE INNOCENCE NETWORK, A NATIONAL ORGANIZATION DEDICATED TO FREEING INNOCENT MEN AND WOMEN AND IMPROVING THE CRIMINAL JUSTICE SYSTEM.
<https://innocencenetwork.org/>

COOLEY IP HAS EXONERATED EIGHT MEN

CONTRIBUTING CAUSES AT A GLANCE:

KENNETH WYNIEMKO-Misidentification, false confession, police and prosecutorial misconduct

NATHANIEL HATCHETT-False confession, suppression of favorable evidence/prosecutorial misconduct

DONYA DAVIS-Misidentification, Untested favorable DNA evidence, False accusation by witness

LEDURA WATKINS-In-Custody Informant, Unreliable forensics (Hair Comparison)

KENNETH NIXON-Unreliable forensics (dog tracking), suppression of favorable evidence

GILBERT POOLE-False accusation/false confession, Unreliable forensics (Bitemark)

COREY MCCALL-Misidentification, Unreliable forensics (ballistics,

GEORGE DEJESUS-False accusation by in-custody Informant, suppression of favorable evidence, misleading forensic testimony

For more case details, visit: <https://www.law.umich.edu/special/exoneration/Pages/about.aspx>



Cooley IP works with the Michigan Innocence Clinic, the Innocence Project in New York and Michigan stakeholders to improve existing laws and support new legislation that improves the criminal justice system.



Legislative Priorities

1. Expand access to post-conviction DNA testing

Update MCL 770.16 to be in line with criminal justice data and the evolution of DNA science.

- Expand testing to guilty plea cases
 - Allow testing in all cases in which current DNA technology may render exculpatory results
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Allow Post-Conviction Testing of Material Evidence

Allow DNA Testing in Parole and Guilty Plea Cases:

Of the first 375 DNA exonerations, **over 15% of exonerees pleaded guilty.**

Of the first 350 DNA exonerees who accepted guilty pleas, **the actual perpetrator of those crimes was found in over 84% of the cases, usually because DNA testing led to their discovery.**

The actual perpetrators in these cases went on to commit at least **7 murders, 18 rapes, and several other violent crimes** while an actually innocent person remained incarcerated.

Allow DNA testing in cases regardless of prior testing if current testing may provide exculpatory evidence:

- The current law requires prior DNA testing if convicted after 2001, but not all convicted individuals had the benefit of DNA testing after this date.
- The technology is constantly improving and obtaining DNA results increases over time. Also, smaller amounts of DNA material are needed to obtain results.

Legislative Priorities

2. Improve Exoneree Compensation

Amend the Wrongful Imprisonment Compensation Act, MCL 691.1751 et. seq. to meet its essential purpose to compensate factually innocent claimants in a timely manner.

- Change the burden of proof to be in line with other civil claims
 - Clarify when compensation is awarded and what proofs are required
 - Fix inconsistencies and technical problems with the current law
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Legislative Priorities

3. Establish a Forensic Science Commission

Forensic Science Task Force Report and Recommendations issued in December 2022

- Establish a commission comprised of a fair cross-section of the legal and scientific community, including research scientists
 - Provide education, oversight, and accountability
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Legislative Priorities

4. Establish a statewide tracking system for in-custody informants

Nationally, 17 % of DNA-based exonerations involved informants of some kind. In Michigan, 28 exonerations involved in-custody informants. Exonerations are just a small sampling of how the use of in-custody informants pose a risk to justice.

In-Custody Informant Safeguards

- List of benefits received by informant to be reported by local prosecutor
- Statewide tracking of this information while preserving privacy concerns
- Notification of victims of the informant
- Model Jury Instruction to guide decision-making

NOTE: Minnesota has a successful tracking model to consider.

<https://app.smartsheet.com/b/form/173bc694ad4340ce8bfceb98a7fb0bf3>

Legislative Priorities

5. Make law enforcement disciplinary records accessible to the public.

The public should have access to police disciplinary complaints and records.

- Prevent wrongdoing, wrongful convictions, and deaths
 - Financial costs to taxpayers is high
 - Transparency protects law enforcement and the public
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Legislative Priorities

6. Allow Incarcerated Individuals limited access to case-related public record documents.

- Allow incarcerated persons to make Freedom of Information (FIOA) requests related to their own cases and minor children.
 - Treat responses to those requests as “legal mail” to ensure compliance.
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Limited access to FOIA balances competing interests

- Persons incarcerated in state or local correctional facilities are not permitted to request **any** public records, MCL 15.231(2)
- Only four states prohibit access to public record for incarcerated individuals
- Limited access provides those who are incarcerated with relevant case-related records.
- Not every incarcerated individual has the needed support to obtain these documents.
- Denial of access interferes with access to the courts and other legal remedies.
- The current FOIA law already addresses public safety and privacy.
- There will be no extra burden on the Michigan Dept. of Corrections if FOIA responses are processed as legal mail.



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